

**THIS OPINION IS NOT A
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Mailed:
January 7, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Capital Resources Group LLC

Serial No. 78610171
Serial No. 78610179

Lesia O. Skrypoczka, Esq. of Akin Gump Strauss Hauer & Feld
for Capital Resources Group LLC

Kathryn E. Coward, Trademark Examining Attorney, Law Office
115 (Tomas V. Vlcek, Managing Attorney).

Before Seeherman, Quinn, and Wellington, Administrative
Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Capital Resources Group LLC filed two intent-to-use
applications for the marks STUDENT LOAN DIRECT and
STUDENTLOANDIRECT, both marks in standard characters format
and for identical services, namely¹:

educational loan services; financing of goods and
services related to education; research in the area of
financial resources for kindergarten through grade 12,
college, university and adult education; college
savings plans; providing scholarships for education;

¹ Application Serial Nos. 78610171 and 78610179 were both filed
on April 15, 2005. Because the applications are owned by the
same applicant, were reviewed by the same examining attorney, and
involve common issues of fact and law, we have consolidated the
appeals.

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management of corporate financial resources for use in education, training and recruitment.

The application for the former mark contains a disclaimer of "STUDENT LOAN."

Both applications were refused registration on the ground that the marks are merely descriptive pursuant to Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1). The examining attorney's arguments regarding the descriptiveness refusals are essentially the same for both applications. She contends that the phrase STUDENT LOAN either describes the type of services recited in the application, namely, providing educational loan and financing for goods and services relating to education, or the phrase describes the subject matter of applicant's research services. The examining attorney also argues that "[b]ecause the services can be obtained straight from applicant without an intervening person, condition, or agency," the term DIRECT "merely describes the method by which the services are offered to the consumer." Brief at p. 3. And, taken together, she concludes that the marks STUDENTLOANDIRECT and STUDENT LOAN DIRECT are merely descriptive of the services recited in the applications.

Applicant has appealed the final refusals. Both applicant and the examining attorney have filed briefs for

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each application.

In support of her refusals, the examining attorney has made dictionary definitions of record for the phrase "student loan" and the word "direct." They are as follows:

Student loan

noun

loan for students: a loan taken by a student to pay for educational expenses, usually at a favorable rate of interest that is subsidized by the government.

[from MSN Encarta online dictionary, definition found at http://encarta.msn.com/dictionary_/student%2520loan.html]

Direct

TRANSITIVE **1.** To manage or conduct the affairs of;
VERB: regulate. **2.** To have or take charge of; control. See synonyms at conduct. **3.** To give authoritative instructions to: *directed the student to answer*. **4.** To cause to move toward a goal; aim. See synonyms at aim. **5.** To show or indicate the way for: *directed us to the airport*. **6.** To cause to move in or follow a straight course: *directed their fire at the target*. **7.** To indicate the intended recipient on (a letter, for example). **8.** To address or adapt (remarks, for example) to a specific person, audience, or purpose. **9a.** To give guidance and instruction to (actors or musicians, for example) in the rehearsal and performance of a work. **b.** To supervise the performance of.

INTRANSITIVE **1.** To give commands or directions. **2.** To conduct
VERB: a performance or rehearsal.

ADJECTIVE: **1.** Proceeding without interruption in a straight course or line; not deviating or swerving: a *direct route*. **2.** Straightforward and candid; frank: a *direct response*. **3.** Having no intervening persons, conditions, or agencies;

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immediate: *direct contact; direct sunlight.* **4.** Effected by action of the voters, rather than through elected representatives or delegates: *direct elections.* **5.** Being of unbroken descent; lineal: *a direct descendant of the monarch.* **6.** Consisting of the exact words of the writer or speaker: *a direct quotation; direct speech.* **7.** Lacking compromising or mitigating elements; absolute: *direct opposites.* **8. Mathematics** Varying in the same manner as another quantity, especially increasing if another quantity increases or decreasing if it decreases. **9. Astronomy** Designating west-to-east motion of a planet in the same direction as the sun's movement against the stars. **10. Sports** Being a free kick in soccer by which a goal can be scored without the ball being touched by a second player.

ADVERB: Straight; directly.

[from The American Heritage Dictionary of the English Language: Fourth Edition. 2000.]

The examining attorney maintains that it is the third adjectival meaning for the term "direct" (i.e., "[h]aving no intervening persons, conditions, or agencies") that is appropriate given the context of applicant's recited services.

The examining attorney attached to her final Office Action printouts from a Patent and Trademark Office electronic database evidencing third-party registrations for marks containing the term "direct" and involving loan or lending services. The registrations either contain a disclaimer of "direct" or are on the Supplemental Register. The examining attorney acknowledges that such evidence is

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not conclusive on the issue of descriptiveness, but contends it shows that "the term ["direct"] has been found to be descriptive in some cases" and is "commonly used in the lending industry."

The examining attorney also attached three articles obtained from the internet to her final Office Action. The articles are captioned as: a) "Direct vs Indirect Lending," b) "How Do I Get My Stafford Loan? Direct Lending vs. FFELP Schools," and c) "Straight Talk on Student Loans." These articles, she argues, is evidence that "direct lending" is a term used to describe a "form of lending used in the field of loan financing especially for student loans."

Applicant argues that the term "direct" has many possible meanings and "as used in Applicant's mark and applied to the services would not be immediately understood by the public with any level of particularity." Brief at p. 4. Applicant points out that the dictionary definition of "direct," as relied on by the examining attorney, provides "several recognized meanings," and "mental steps would be required to glean any particular meaning for the term..."

Applicant argues that even if the term "direct" is held to be descriptive, applicant's mark is "one unitary

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phrase." Taken together, applicant contends, this phrase is a "unique and distinctive mark which is not merely descriptive of the services claimed in the application." Brief at p. 7.

Applicant contends that "[t]he practice of the Trademark Office in registering on the Principal Register marks containing 'DIRECT' with no disclaimer or evidence of distinction required clearly underscores the fact that 'DIRECT' is not merely descriptive in this case." Brief at p. 5. To support this, applicant specifically relies on nine registrations involving International Class 36 (financial and insurance) services for marks containing the term "direct" in which that word was not disclaimed.²

Before addressing the merits of the refusal, we note that applicant argues in its reply brief that one of the internet articles relied on by the examining attorney is "inherently unreliable." As to the article captioned "Direct vs Indirect Lending," applicant contends "there is no way to ascertain if this is an article from an

² We note that applicant identified Registration No. 2480188 twice in the list of third-party registrations identified in its appeal brief. Applicant previously submitted printouts from a Patent and Trademark Office electronic database for these and other third-party applications during the prosecution of the application. As to the third-party applications, they have no evidentiary value other than to show that they were filed. *In re Juleigh Jeans Sportswear Inc.*, 24 USPQ2d 1694, 1699 (TTAB 1992).

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authoritative source on the subject, or the blogging of a self-proclaimed 'money expert'." Although applicant does not specifically attack the admissibility of this article, we find it necessary to point out that internet evidence is generally admissible and may be considered for purposes of evaluating a trademark. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007). See also TMEP §710.01(b) (4th ed. 2005) ("Articles downloaded from the Internet are admissible as evidence of information available to the general public, and of the way in which a term is being used by the public. However the weight given to this evidence must be carefully evaluated because the source is often unknown"). Accordingly, we have considered this article in this light and in conjunction with all of the other evidence of record.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services

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in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314 (TTAB 2002); see also *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

We turn now to the examining attorney's Section 2(e)(1) refusals as applied to applicant's marks

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STUDENTLOANDIRECT and STUDENT LOAN DIRECT. Initially, we note that there is no issue as to whether the phrase "student loan" is descriptive. Clearly, the phrase is descriptive for applicant's "educational loan services" and applicant has not argued to the contrary.

As to the remaining term, "direct," the examining attorney asserts that it is descriptive of the services to be rendered, i.e., straight from the applicant without an intervening person, condition, or agency. We agree with the examining attorney in view of the evidence of record. Specifically, the evidence establishes that the term "direct" takes on this connotation when used in connection with lending and loans, including those made for educational purposes. For example, the article "Direct vs Indirect Lending" (www.wfhummel.cnchost.com) describes "direct lending" as involving "the transfer of funds from the ultimate lender to the ultimate borrower, most often through a third party." In contrast, the article describes "indirect" lending as involving a "financial intermediary who pools the funds of many lenders in order to re-lend at a markup over the cost of the funds." As previously stated, applicant has objected to this article because the author is unknown; however, the article is still evidence of the perception of the author as to the descriptive

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nature of "direct" with respect to loans, as well as to the understanding of those that read the article. We also note that applicant has not submitted any evidence that rebuts or contradicts the use of the term "direct."

The article "How Do I Get My Stafford Loan? Direct Lending vs. FFELP Schools" (www.princetonreview.com), discusses different ways for students to obtain federal loans, including "direct lending." Here, "direct lending" is described as "remov[ing] the 'middle-man' from the equation of applying for an receiving student loans."

Finally, in the third article, "Straight Talk on Student Loans" (www.ppionline.org), the author discusses student loan practices. He contrasts "direct lending," which he describes as the federal government "lending directly to students," with the federal government guaranteeing bank loans to students. The "direct lending" method is touted as more efficient because the "middlemen are cut out of the process."

Based on the above and contrary to applicant's contention, we find that there is no exercise of imagination required from prospective users of applicant's services in order for them to readily perceive the term "direct," when used in applicant's marks and in connection with applicant's recited services, as describing the type

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or subject matter of applicant's student loan and educational financing services, namely, that purchasers may receive direct student loans or direct lending from applicant for their educational needs.

As noted, both applicant and the examining attorney rely on third-party registrations to support their respective arguments regarding whether or not the term "direct" is descriptive of applicant's recited services. Of the third-party registrations identified by applicant in its appeal brief for marks containing the term "direct" on the Principal Register without a disclaimer, only two involve lending or some type of loan service.³ The other third-party registrations applicant relies on have little or no probative value because they involve services in the fields of employment benefit administration, financial investment, real estate brokerage, etc. The examining attorney, on the other hand, identified in her final Office action what she called a "sample" of ten third-party registrations for marks containing the term "direct." All of these registrations either contain a disclaimer of "direct" or are on the Supplemental Register and all

³ We refer to Registration Nos. 2639138 (RV CREDIT DIRECT for "providing financing and origination of loans for recreational vehicles") and 2480188 (CHASE HOME LOAN DIRECT for "mortgage banking services").

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involve lending or some type of loan service. Thus, to the extent that we accord any weight to the third-party registrations of record in our analysis as to whether the term "direct" is descriptive in connection with applicant's student loan or financing services, we note that an overwhelming majority of these registrations suggest that the term is descriptive in connection with loan or financing services. In any case, as expressly stated by our principal reviewing court in *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001), "The Board must decide each case on its own merits, ... Even if some prior registrations had some characteristics similar to [the subject] application, the PTO's allowance of such prior registrations does not bind the Board or this court."

Applicant's argument that even if the term "direct" is deemed to be descriptive, the "combination of descriptive elements may result in a non-descriptive composite" is also misplaced. A term which is created by combining two or more unregistrable words may achieve registration if, in combination, a new and different commercial impression is achieved and/or the term so created imparts a bizarre or incongruous meaning as used in connection with the goods or services. See *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370 (Fed. Cir. 2004); *In re National Shooting*

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Sports Foundation, 219 USPQ 1018 (TTAB 1983). In this case, however, applicant does not identify (and we do not see) any new different commercial impression or point to a bizarre or incongruous meaning created by the combination of the terms. To the contrary, we find that applicant's marks, when used in connection with applicant's recited services, comprise three descriptive components which, taken together, create marks that are merely descriptive of the services.

In summary, we find that the evidence supports the examining attorney's refusals to register applicant's marks on the basis that they are merely descriptive of the recited services. Specifically, we find that the marks STUDENTLOANDIRECT and STUDENT LOAN DIRECT immediately describe, without conjecture or speculation, the type or an important feature of applicant's educational loan services, namely, that the recited services will include student loans that are directly lended.

Decision: The refusals to register the marks under Section 2(e)(1) are affirmed.